



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 12 2015**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner:
Beneficiary:

[REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:


[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (the director) denied the immigrant visa petition and dismissed a subsequent motion as untimely. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as an international manufacturer and distributor of fine jewelry. It seeks to permanently employ the beneficiary in the United States as a VP-Latin American region. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

The director's decision concluded that the petitioner failed to establish that the beneficiary met the educational requirements of the labor certification. The director subsequently dismissed the petitioner's motion to reopen or reconsider as untimely filed.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Untimely Motion

The director's October 16, 2014 decision dismissed the petitioner's motion as untimely. In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The petitioner contends that its motion was filed on September 4, 2014 because the regulations provide that "service by mail is complete upon mailing." However, the petitioner's reading of the regulations is incorrect. The date

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). If a motion is untimely filed it must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4), for failing to meet applicable requirements.

The director issued his decision on August 2, 2014. The petitioner's motion was not submitted until September 5, 2014, or 34 days after the director's decision was issued. Accordingly, the motion was untimely filed. We affirm the director's dismissal of the petitioners motion pursuant to 8 C.F.R. § 103.5(a)(4).

The Minimum Requirements of the Offered Position

Even if the motion had been timely filed, the beneficiary does not meet the educational requirements of the labor certification. The Immigrant Petition for Alien Worker (Form I-140) was filed on January 30, 2013. The priority date of the petition is December 18, 2012, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.²

The petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (USCIS) must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position.

² We do not address whether the beneficiary possesses a U.S. or foreign equivalent baccalaureate degree followed by five (5) years of post-baccalaureate experience pursuant to 8 C.F.R. § 205.4(k)(2). In the instant case, the labor certification does not allow an applicant to qualify for the offered position with any alternate combination of education and experience. Therefore, the beneficiary must possess a U.S. master's or foreign equivalent degree and 8 years of experience as stated by the terms of the labor certification.

Madany, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by “examin[ing] the certified job offer *exactly* as it is completed by the prospective employer.” *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve “reading and applying *the plain language* of the [labor certification]” even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master’s degree in business administration, business management or related.
- H.5. Training: None required.
- H.6. Experience in the job offered: 96 months of experience.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: marketing director, marketing manager, sales manager or related.
- H.14. Specific skills or other requirements: 8yrs experience (mktg & sales), operating in multi-layer, multi-country large corps w/ a leading role in a function or geog; Experience w/ starting a business, establishing business strategy, recommending structure & investment; Experience w/ sales & mktg functions in large corps, in consumer goods industry in LA; Experience in retail environment from retailer/supplier point of view; Experience w/ Consumer & Shopper dynamics, in analyzing behavior at point of sale; Experience w/ wholesaling business, understanding dynamics of importing & exporting goods across LA & Caribbean; Experience managing 3rd party distributors; Experience w/ Sr. Mgmt/Boards of large corps, in presenting strategic ideas & influencing key stakeholders on strategic direction & supporting investment to growth the business; Experience with luxury goods, luxury consumers & understanding the elements required to grow a luxury business. Experience can be concurrent & employer will accept any suitable combination of education, training or experience that is equivalent to the actual minimum requirements of the position.

Part J of the labor certification states that the beneficiary possesses a master’s degree in business administration from [REDACTED] Brazil, completed in 2002. The record contains a copy of the beneficiary’s [REDACTED] diploma and transcripts from [REDACTED] Brazil, issued on January 6, 1992. The record also contains a copy of the beneficiary’s certificate of completion of the MBA Empresarial program from [REDACTED], Brazil, issued on October 11, 2002.

The record contains an evaluation of the beneficiary’s educational credentials prepared by Dr. [REDACTED] on August 22, 2014.³ The evaluation states that the beneficiary

³ USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts

completed academic qualifications commensurate with a four-year bachelor's level degree in business administration and a master's-level degree in business administration. Specifically, it states that the beneficiary's *Bacharel em Administracao Empresas* is equivalent to a bachelor's-level degree in business administration in the United States and his master's degree in business administration issued by a Brazilian university is equivalent to a master's-level degree in business administration at an accredited U.S. university. While the evaluation claims that the beneficiary's master's degree in business administration was issued by a Brazilian university, [REDACTED] is not an institution of higher education accredited by the Ministry of Education under recommendation of the Chamber of Higher Education and Commission for Improvement of Higher Education Personnel (CAPES). See [www.\[REDACTED\]](http://www.[REDACTED]) (accessed February 10, 2015). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record contains an evaluation of the beneficiary's educational credentials prepared by Professor [REDACTED] for [REDACTED] on July 9, 2014. The record also contains an evaluation of the beneficiary's educational credentials prepared by Professor [REDACTED] for [REDACTED] on August 20, 2014. Both evaluations state that the beneficiary's *Bacharel* is the equivalent of a U.S. Bachelor of Business Administration degree and his Master of Business Administration is equivalent to a U.S. Master of Business Administration degree.

The record contains an evaluation of the beneficiary's educational credentials prepared by [REDACTED] for [REDACTED] on August 21, 2014. The evaluation states that the beneficiary's *Bacharel em Administracao Empresas* is the equivalent of a U.S. Bachelor of Business Administration degree and his MBA Empresarial is the equivalent of a U.S. Master of Business Administration degree.

All three of the above-listed evaluations are inconsistent with an evaluation of the beneficiary's educational credentials prepared by [REDACTED] for the [REDACTED] on October 22, 2010. See *Matter of Ho*, 19 I&N Dec. at 591-92. The evaluation agrees that the beneficiary's *Bacharel em Administracao Empresas* is the equivalent of a bachelor's degree in business administration from a regionally accredited college or university in the United States. However, the evaluation states that the beneficiary's MBA Empresarial is equivalent to completion of a professional development program offered by a private organization in the United States.

Further, while the two [REDACTED] evaluations as well as the [REDACTED] and [REDACTED] evaluations claim that the Electronic Database for Global Education (EDGE) supports a finding that

supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

the beneficiary's MBA Empresarial is equivalent to a U.S. master's degree, as discussed below, these findings are inconsistent with EDGE and supporting documentation posted by the creators of EDGE. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We have reviewed EDGE, created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁴

According to EDGE, a four or five-year *Titulo* or *Grau de Bacharel* from Brazil is "comparable to a bachelor's degree in the United States."

EDGE further discusses *Titulo* or *Grau de Mestre*, *Diploma de Mestrado* and the *Mestrado Profissional*. EDGE states that these credentials represent attainment of a level of education comparable to a master's degree in the United States. However, the record does not establish that the beneficiary's MBA Empresarial is a *Titulo* or *Grau de Mestre*, *Diploma de Mestrado* or a *Mestrado Profissional*. The credentials indicate that the beneficiary was issued a *Certificado* of completion of the MBA Empresarial. EDGE does not provide an educational equivalency for such a credential.

The AACRAO overview of Brazil provides that:

Graduate level programs are divided into *Cursos de Aperfeiçoamento*/professional development programs, *Cursos de Especialização* / specialization programs, *Mestrado Profissional*/professional masters, *Cursos de Mestrado*/master's degree programs and *Cursos de Doutorado*/doctoral programs. Professional development and specialization programs are considered *lato sensus*/wide sense graduate level programs and follow independent legislation. Such programs lead toward professional certificates, not graduate degrees.

⁴ In *Confluence International, Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification required a degree and did not allow for the combination of education and experience.

See <http://edge.aacrao.org/country/overview/brazil-overview> (accessed February 10, 2015).

Further, according to ACCRAO's Project for International Education Research (PIER) publication: the *P.I.E.R World Education Series: A Study of the Education System of Brazil and Guide to the Academic Placement of Students in Educational Institutions in the United States* (2004), MBA programs are neither accredited nor recognized by CAPES and are classified as *lato-sensus*/wide sense graduate programs which do not lead to an academic degree. See <http://edge.aacrao.org/archives/Brazil%202004.pdf> (accessed February 10, 2015).

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. Master's foreign equivalent degree in business administration, business management or a related field.

The petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date.

Conclusion

In summary, the petitioner failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification. Further, the petitioner failed to establish that its untimely motion to reopen and reconsider was improperly rejected. The director's decision denying the petition is affirmed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.